

July 17th, 2020

Ms. Amber Davis, Business Services Consultant
Ontario Ministry of Agriculture, Food and Rural Affairs
2nd Floor
1 Stone Road West
Guelph, ON N1G 4Y2

Dear Ms. Davis,

The Ontario Federation of Agriculture (“**OFA**”) has been asked by its members to make a submission on their behalf to the Ontario Ministry of Agriculture, Food and Rural Affairs (“**OMAFRA**”) responding to access to information request #20-05, which states as follows:

“List of all Ontario Businesses with a Farm Business Registration (FBR). If possible, I would like their FBR number as well, but at the very least, I just need the names of the businesses that are registered.” (hereinafter the “**FOI Request**”)

The OFA has been advised that many of its members intend to respond personally to the invitation for representations in order to state their opposition to the requested disclosure of their information. The OFA makes this supplementary submission in support of its members.

The OFA respectfully submits that OMAFRA must refuse to disclose both the requested list of businesses with an FBR, and the FBR numbers, on the following mandatory legislated grounds:

1. Registration as a farm business and the assigned FBR number constitute personal information, as defined in section 2 of the *Freedom of Information and Protection of Privacy Act* RSO 1990, c F.31 (“**FIPPA**”), the disclosure of which would constitute an invasion of personal privacy.
2. The requested records include commercial and financial information supplied to OMAFRA in confidence, and disclosure can reasonably be expected to cause harm to third parties.
3. Disclosure of the requested records will reveal information gathered for the purpose collecting tax.
4. The disclosure can reasonably be expected to seriously threaten the safety or health of an individual.

Each of these grounds are more particularly addressed in the paragraphs that follow.

1. Personal Information

FIPPA provides that an institution **must** refuse to disclose a record where disclosure would reveal the personal information of a person other than the requester and result in an unjustified invasion of personal privacy.

FIPPA provides the following definition of “personal information”

“personal information” means recorded information about an identifiable individual, including:

.....
(c) *any identifying number, symbol, or other particular assigned to the individual,*

.....
(h) *the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.*

FIPPA further defines the definition of “personal information” as excluding “*the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity*”¹, and states that this exclusion applies “*even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.*”²

The Ontario Information and Privacy Commissioner (“**IPC**”) has interpreted these provisions as generally limiting the definition of personal information to identifiable individuals who are natural persons and not legal entities such as corporations, partnerships, sole proprietorships or business organizations.³

However, the IPC has recognized that some information relating to an individual in a professional, official or business capacity may, in certain circumstances, be so closely related to the personal affairs of an identifiable individual as to constitute that individual’s personal information.⁴

In Reconsideration Order R-980015, the IPC reviewed its previous Orders in which it had found information related to business entities to be personal information. Following a brief description of each Order, the IPC stated:

*“In all of these latter cases, the information at issue either fell within a specifically enumerated category under the definition of personal information or had some other personal, as opposed to professional or representative, quality about **it such that it could be said to be “about” the identifiable individual in each case.**”* (emphasis added)

¹ Section 2(3)

² Section 2(4)

³ for example, Order 16

⁴ see Orders 113, P-364, M-138, Reconsideration Order R-980015

Furthermore, in *Ontario (Public Guardian and Trustee), Re*,⁵ the IPC stated:

“The [IPC] has found information relating to business entities to constitute personal information of the person or persons who own the business entity in a number of circumstances ...].

... information relating to the finances of a corporation or business entity owned by one individual, particularly information pertaining to the earnings and/or value of the business entity, is information that can easily be attributed to the owner of a business entity ... [Orders P-364, P-705, M-277] demonstrate that in the case of sole shareholder business entities, the [IPC] has consistently found information relating to the earnings and value of the business to be the personal information of the owner of the business entity [T]his approach is consistent with the statements of Adjudicator Donald Hale in Reconsideration Order R-980015 because of the earnings and value of a sole shareholder corporation is information which relates to the sole shareholder in his or her personal capacity.” (emphasis added)

The IPC has therefore recognized that business information can in some circumstances, where there is a close connection to the individual, also constitute personal information.

Approximately 70% of OFA members operate and register as farm businesses in their own or their family name. The remainder operate under a business name registered under the *Business Names Act* RSO 1990, c B.17, which in many cases also reveals their personal identity.

The OFA therefore submits that disclosure of a list of the names of FBR registrants will include personal information about identifiable individuals. FIPPA provides further specific examples of personal information in Sections 2(1)(c) and (f).

Section 2(1)(c)

“any identifying number, symbol, or other particular assigned to the individual”

The OFA submits that an FBR number represents a unique number assigned to a person operating a farm business, and is analogous to an employee number. The IPC has held that an employee number, when linked to the name of the individual, reveals something of a personal nature about the individual, and is thus personal information.⁶

Section 2(1)(h)

“the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual”.

The *Farm Registration and Farm Organizations Funding Act, 1993* SO 1993, c 21 requires that all persons carrying on a farming business and earning an annual gross income of at least \$7,000., must file a completed farming business registration form.⁷ The OFA submits that the names of farm business registrants will therefore reveal personal financial information about the individuals who either own and operate a registered farm business.

⁵ 2000 CarswellOnt 9715

⁶ Ontario (Solicitor General)(Re), 2019 CanLII 123127 (ON IPC)

⁷ S.2(1). See also Reg. 723/93, at S.1(1)

Upon receipt of an FBR number, a farm business gains access to the provincial Farm Property Class Tax Rate Program which reduces the property tax payable. The disclosure of a list of persons with FBR numbers would therefore reveal this additional personal financial information, contrary to FIPPA.

The OFA further notes that the *Farm Registration and Farm Organizations Funding Act*, 1993, and Regulation 723/93 made under the *Act*, prescribe that mandatory registration must be submitted using the short form, except in every fifth year, when a long form is required. A long form was required in 2020.⁸

Registrations are due each year by March 1.⁹ The long form which was due by March 1, 2020 requires that registrants provide such personal information as socioeconomic data,¹⁰ including the age, education and income range of the individuals who own and/or operate the farm, and the payroll information for employees of the farm business.¹¹

Access to the extensive personal information collected by OMAFRA through the long forms submitted by registrants this year can be requested once the list of registrants is disclosed.

Presumed Invasion of Privacy

FIPPA states that the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the information:

S.21(3)(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The OFA therefore submits that identification as a farm business registrant is personal information, and asks that OMAFRA refuse to disclose such personal information on the basis that the requested records would reveal personal information of individuals other than the requester, resulting in an invasion of personal privacy, contrary to Section 21(1)(f) of FIPPA.

2. Third Party Information

FIPPA recognizes that public institutions may have custody of information belonging to third parties which, if disclosed, could cause harm. FIPPA therefore provides at Section 17(1) that an institution's privacy head **must** refuse to disclose a requested record if three criteria are met:

Type of information: a record reveals a "trade secret or scientific, technical, commercial, financial or labour relations information";

Confident Information: the record contains information supplied to the institution in confidence, implicitly or explicitly; and

Reasonable Expectation of Harm: there is a reasonable expectation that disclosure of the information will:

⁸ Regulation 723/93, at Section 1.1(2(a))

⁹ Regulation 722/93, at Section 1

¹⁰ Section 2(1)3

¹¹ Section 2(1)5

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.¹²

The OFA respectfully submits that the requested information satisfies all three criteria required by Section 17(1) of FIPPA, as further described below, and OMAFRA must therefore refuse to disclose the requested information.

Type of Information

A Farm Business Registration number is assigned to any person carrying on a farming business and earning an annual gross income of at least \$7,000.¹³ The assignment of an FBR number therefore reveals that the person to whom the number has been assigned makes at least \$7,000 per year, which the OFA submits is information of a commercial and financial nature.

Information supplied in Confidence

The OFA submits that OMAFRA's use of the information supplied by farm business registrants is defined by the *Farm Registration and Farm Organizations Funding Act, 1993*, as follows:

Use of information

3 *The Minister may use the information received from farming business registration forms to develop agricultural policies and programs for the Ministry, to develop and implement methods of distributing information about the policies and programs, to develop mailing lists and for the prescribed purposes.*

Registrants who provide their personal and business information as part of their registration therefore do so with the expectation that OMAFRA's use of the information will be limited to:

- aggregation and anonymization of the data for the purpose of developing agricultural policies and programs;
- developing its own mailing lists for the purpose of distributing information about its policies and programs to farm businesses; and
- other prescribed purposes, which the Act and its regulations specify as the accreditation of farm organizations.

¹² FIPPA at Section 17(1)

¹³ S.2(1), and Regulation 23/93 at S.1(1)

The OFA respectfully submits that registrants provide their financial and commercial information relying on OMAFRA's treatment of such information as confidential, in accordance with the inherently **confidential, internal uses** allowable under the Act.

Reasonable Expectation of Harm

The OFA submits that a disclosure of their members' registration as a farm business will give rise to a reasonable expectation of harm, as a result of numerous incidents of activism which have targeted farmers, and have been staged near, at or on their farms. These incidents have resulted in an interruption of business, a decrease in productivity, and reputational harm.

The frequency of such protests have increased recently, in response to Bill 196.

OFA members rely on the following reports of incidents targeted at farm businesses as evidence of their reasonable expectation of a loss of competitive position and financial harm if they are identified as operating a farm business.

University of Guelph research site vandalized with animal rights graffiti:

<https://globalnews.ca/news/6892612/quelph-university-animal-rights-graffiti/>

Dairy farm targeted by animal rights activists:

<https://www.todayfarmer.ca/news/local-news/animal-activists-appeared-at-two-dairy-farms-on-saturday>

Break and Enter and theft at pig farm:

<https://www.producer.com/2019/05/charges-dropped-against-animal-rights-activist-in-ontario/>

<https://london.ctvnews.ca/all-charges-dropped-against-animal-rights-activist-in-pig-farm-break-in-1.4403906>

1600 Minks released by activists:

<https://www.cbc.ca/news/canada/kitchener-waterloo/mink-breeders-offer-75k-to-find-out-who-set-1-600-mink-free-in-st-marys-1.3102214>

<https://www.cbc.ca/news/canada/kitchener-waterloo/activists-suspected-of-releasing-1600-mink-from-st-marys-farm-1.3095368>

Acts of farm vandalism:

<https://www.betterfarming.com/online-news/farmers-urged-keep-eye-out-vandals-24928>

3. Tax Information

Section 17(2) of FIPPA addresses the tax information of all third parties, whether natural or other legal persons, and states that a privacy head **must** refuse to disclose any record that “*reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.*”

Section 21(3)(e) of FIPPA provides that disclosure of personal information “*obtained on a tax return or gathered for the purposes of collecting a tax*” is presumed to be an invasion of personal privacy and prohibited under the Act.

The OFA submits that collectively Subsections 17(2) and 21(3)(e) act as a bar to the disclosure of the names of farm business registrants and their FBR numbers, whether those registrants are individuals or other form of legal entity.¹⁴

For new farm business registrants and for audit purposes, Agricorp verifies that the \$7,000. threshold established under Regulation 723/93 and the *Farm Registration and Farm Organizations Funding Act 1993* has been met by reviewing the farm business’ most recent income tax return. Therefore, disclosure of the names of active farm business registrants would reveal information that was obtained from tax returns.

Furthermore, the name of the person operating a farm business which has been assigned an FBR number denotes access to the provincial Farm Property Class Tax Rate Program, which is information that informs and determines tax liability.

4. Risk to Safety

Section 20 of FIPPA provides as follows:

Danger to safety or health

20 A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The OFA submits that OMAFRA should refuse to disclose the names of people and businesses with FBR numbers where such information could reasonably be expected to threaten their health and safety.

The OFA relies on the history of threatening, harassing conduct of animal rights activists whose actions have posed a risk of harm, and/or a reasonable fear of harm, amongst farmers who produce animal products in the same location where they and their families reside. OFA submits that the following incidents are examples where there was a health and safety risk to its members:

Trucks set on fire by Animal Liberation Front:

<http://www.animalrightsextremism.info/news/criminal-incidents/animal-liberation-front-in-canadian-arson/>

<https://animalliberationpressoffice.org/NAALPO/2015/06/08/animal-liberation-front-destroys-two-hls-trucks-in-ontario-canada/>

Animal rights activists break into duck farm:

<https://www.newmarkettoday.ca/police-beat/warden-closed-for-animal-rights-protest-at-king-cole-duck-2099766>

<https://www.yorkregion.com/news-story/9874554-animal-rights-activists-break-into-king-cole-ducks-barn-in-stouffville/>

¹⁴ See *Workers' Compensation Board*, 1992 CarswellOnt 6830

Summary

The OFA respectfully submits that FIPPA requires that OMAFRA deny access to the information sought under Request #20-05.

The OFA states that the requested records contain personal information which if disclosed would result in an invasion of personal privacy.

In addition, or in the alternative, the requested records include commercial and financial information supplied to OMAFRA in confidence by OFA members, and disclosure of this information could reasonably be expected to cause financial harm to third parties, and/or could reasonably be expected to seriously threaten the safety or health of an individual.

The OFA lastly submits that the request must be denied as disclosure of the requested records will reveal information gathered for the purpose collecting tax.

The OFA would be pleased to provide additional information upon request, and appreciates OMAFRA's consideration of the above submissions.

Sincerely,



Keith Currie
President